

Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 4, 1995.

Patrick M. Tobin,

Acting Regional Administrator, USEPA
Region IV.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended under Florida by removing the Site "Woodbury Chemical Co. (Princeton Plant)".

[FR Doc. 95–28390 Filed 11–24–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991–AA81

Health Care Programs: Fraud and Abuse; Revisions to the Civil Money Penalty Provisions Relating to the Misuse of Certain Names, Symbols and Emblems

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: In accordance with amendments to section 1140 of the Social Security Act, resulting from the Social Security Independence and Program Improvements Act of 1994, this final rule makes a number of revisions to the civil money penalty authority regulations relating to the misuse of certain symbols, emblems and names. Among other revisions, this rule eliminates the annual cap on penalties, includes the words and letters of the Department and Medicaid under the prohibition, and redefines a violation with regard to mailings. In addition, this final rule serves to remove references to Social Security and the Social Security Administration (SSA) from the HHS/OIG penalty regulations. The penalty regulations addressing the misuse of certain words, letters, symbols and emblems for SSA and its programs are

being set forth in a new part of the Code of Federal Regulations published elsewhere in this edition of the Federal Register.

EFFECTIVE DATE: These regulations are effective on November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Management and Policy, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28, 1991, the Department of Health and Human Services' (HHS) Office of Inspector General (OIG) published final rulemaking in the Federal Register that implemented new section 1140 of the Social Security Act (the Act), as established by section 428(a) of Public Law 100–360 (56 FR 42532). The rulemaking set forth final OIG regulations for imposing civil money penalties (CMPs) for the use—in advertising, solicitations or other communications—of certain words, letters, symbols and emblems associated with the Department's Social Security and Medicare programs in a manner that the user knows, or should know, would convey a false impression that (1) the communicated item was approved, endorsed or authorized by the Department or its programs; or (2) the responsible person or organization has some connection with, or authorization from, the Department or these programs.

Specifically, the rulemaking was designed to assist in protecting citizens from misrepresentations concerning the services offered and the programs administered by the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) by imposing CMPs against individuals and entities that make false use of—

- The words "Social Security," "Social Security Account," "Social Security Administration," "Social Security System," "Medicare," and "Health Care Financing Administration," or any combination or variation of such words;

- The letters "SSA" or "HCFA," or any combination or variation of such letters; or
- Any symbols or emblems of SSA or HCFA, or any combination or variation of such symbols or emblems.

In accordance with section 1140 of the Act, the regulations established CMPs of up to \$5,000 for each violation of this prohibition relating to printed media, and up to \$25,000 per violation in the case of a misleading broadcast or telecast. In the case of a direct mailing solicitation, the regulations stated that each group mailing of an identical, non-personalized, generic letter or

solicitation sent at the same time on the same day would be considered to be a single violation. Each unique or personalized letter or solicitation, such as with the individual's name and address appearing in the body of the advertisement or on the mailing envelope or covering would be treated as a separate and single violation. With respect to multiple violations consisting of substantially identical communications or productions, total penalties could not exceed \$100,000 per year.

The regulations set forth six mitigating or aggravating factors to be used in determining the amount of penalty to be imposed with respect to a violation, including any efforts by the individual, entity or organization to include a clear, prominent and conspicuously-placed disclaimer of Government association on the mailing envelope, the first page, or in the beginning of the solicitation or offering.

II. Changes Resulting From Public Law 103–296

The passage and enactment of Public Law 103–296, the Social Security Independence and Program Improvements Act (SSIPIA) of 1994, has resulted in several refinements to the HHS/OIG penalty regulations that should be significant in their impact but present no apparent policy discretion in their implementation. However, as discussed below, section 312(a) of SSIPIA made one change to the statute regarding the reproduction, reprinting or distribution of official forms, applications or other publications that may require the exercise of policy discretion in its implementation and thus is not addressed in this final rule.

Social Security Administration as an Independent Agency

First and foremost, section 101 of SSIPIA established the Social Security Administration as an independent agency in the Executive Branch, with the duty to administer the old-age, survivors and disability insurance program under title II of the Act and the supplemental security income program under title XVI of the Act. In creating an independent SSA, Public Law 103–296 also established an independent Office of Inspector General within that agency, with separate and autonomous authority for levying certain CMPs. As a result, a newly-established 20 CFR part 498 has been developed by the SSA/OIG, and is being published elsewhere in this issue of the Federal Register, setting forth the basis for any new SSA/OIG penalty authorities, the mitigating and aggravating factors to be used in

assessing penalty amounts, and the due process and hearing and appeals mechanism to be utilized in the imposition of those CMP provisions. The direct effect of this action is the transfer of all references to CMPs for the misuse of the words, letters, symbols and emblems relating to SSA and its programs out of 42 CFR part 1003 and into the new 20 CFR part 498.

Amendments to Section 1140 of the Social Security Act

In addition, section 312 of SSIPIA amended section 1140 of the Act through several provisions designed to broaden the existing deterrents against misleading mailings and advertisements directly involving Social Security and the Department's health care programs. Among other changes, section 312 of SSIPIA: (1) broadened the list of prohibited words, symbols and acronyms subject to a violation; (2) revised the standard of knowledge for determining a violation; (3) exempted any State agency (or any instrumentality or political subdivision of the State) from the prohibited use of these words, letters, symbols or emblems where such use serves to identify these entities; (4) specifically defined a violation with regard to mailings; (5) eliminated the annual penalty cap; and (6) eliminated the use of a disclaimer as a factor in determining a violation under this provision. As indicated above, these changes and their effect on violations specifically involving SSA and its programs are being addressed in new and separate rulemaking by the SSA/OIG to be codified in 20 CFR part 498.

Section 312 of SSIPIA also amended section 1140 of the Act by indicating that no individual, organization or entity may, for a fee, reproduce, reprint or distribute any form, application or other publication of the Department unless prior authorization and approval is obtained for such activity from the Secretary. The prohibition of unauthorized reproduction, reprinting or distribution for a fee of certain official HHS and program documents goes beyond the scope of these regulations. While one option may be the placement of a written statement on certain forms, applications or other publications allowing for their reproduction, reprinting or distribution, we believe formalized policies and procedures addressing this new requirement must be developed through separate rulemaking prescribed by the Secretary. We will be working with the Department and its programs in the near future to develop proposed rulemaking and seek public comment on how best to implement this new authority.

III. Revisions to 42 CFR Part 1003

As a result of Public Law 103-296, we are amending the HHS/OIG civil money penalty regulations at 42 CFR part 1003 as follows:

- *References to SSA*—Current references in §§ 1003.100(b)(1)(v) and 1003.102(b)(7) to the words "Social Security," "Social Security Account," "Social Security Administration," and "Social Security System," and the letters "SSA," are being deleted.

- *Expanded list of prohibited words and letters*—In addition to the words "Health Care Financing Administration" and "Medicare," and the letters "HCFA," we are amending § 1003.102(b)(7) to prohibit the misuse of the words "Department of Health and Human Services," "Health and Human Services," and "Medicaid;" the letters "DHHS" and "HHS;" and the symbols and emblems of the Department, including the Medicare card.

- *Conduct for determining a violation*—The current standard for determining a violation under this provision is that the individual, entity or organization "knew, or should have known" that their use of certain words, letters, symbols or emblems would convey the false impression that the advertisement or solicitation was authorized, approved or endorsed by the Department or HCFA. In accordance with the amendments to section 1140 of the Act, § 1003.102(b)(7) is being revised to further prohibit the inclusion of these designated words, letters, symbols and emblems where they are used in a manner that could be "reasonably interpreted or construed as conveying" a relationship with the Department or HCFA.

- *State agency exemptions*—We are further amending § 1003.102(b)(7) by adding a new paragraph stating that any State agency (or instrumentality or political subdivision of the State) will be exempt from the prohibited use of these words, letters, symbols and emblems if these items are used to identify the State agency, instrumentality or subdivision.

- *Definition of a mailing violation*—The current regulations at § 1003.103(d)(2)—that define each group mailing of an identical, non-personalized, generic letter or solicitation sent at the same date and time as a single violation—are being revised in accordance with the statute to indicate that each individual piece of mail or each individual solicitation in a mass mailing or distribution will now be viewed as an individual and independent violation.

- *Removal of annual cap on penalties*—Reference to the annual penalty cap of \$100,000 for violations resulting from this provision, currently set forth in § 1003.103(d)(1), is being deleted in accordance with the statutory rescission.

- *Elimination of use of a disclaimer as a mitigating factor*—We are revising § 1003.106(a)(3) to indicate that the use of disclaimer of affiliation with the Government, the Department or its programs will no longer be considered as a mitigating factor in determining a violation and the amount of penalty under this provision.

In addition to these revisions resulting from Public Law 103-296, we are further revising § 1003.106(a)(3) to include the financial condition and degree of culpability of the individual, organization or entity as factors that the OIG will consider in determining the amount of any penalty in accordance with this violation. This technical revision is consistent with section 1128A(d)(2) of the Act, which was incorporated into section 1140, and was inadvertently omitted in the original rulemaking.

IV. The Handling of Dual Violations

The HHS/OIG and the SSA/OIG may make separate and independent determinations with regard to violations of section 1140 of the Act—and levy separate CMPs—against individuals, entities or organizations who make prohibited use of words, letters, symbols or emblems of *both* the Department and SSA in the same advertisement or solicitation.

V. Waiver of Proposed Rulemaking

In developing our regulations, we follow the notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures in this case. Specifically, this rulemaking comports and is consistent with the revised statutory authority set forth in section 1140 of the Act, with no issues of policy discretion. As a result, we believe that opportunity for prior comment is unnecessary and we are issuing these revised regulations as a final rule that will apply to all

pending and future cases under this authority.

VI. Regulatory Impact Statement

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866 and determined that it does not meet the criteria for a significant regulatory action. As indicated above, the provisions contained in this final rulemaking set forth the revised authorities for levying CMPs against those individuals, entities and organizations that misuse specific Departmental and HCFA program words, letters, symbols and emblems. These revisions are as a result of statutory changes to section 1140 of the Social Security Act, and serve to clarify departmental policy with respect to the imposition of CMPs against those who violate the statute. We believe that the great majority of individuals, organizations and entities do not engage in such prohibited activities and practices discussed in these regulations. As a result, we believe that the aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited behavior in violation of the statute. As such, this final rule should have no direct effect on the economy or on Federal or State expenditures.

Regulatory Flexibility Act

In addition, we generally prepare a regulatory flexibility analysis consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While some sanctions and penalties may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In either case, we do not anticipate that a substantial number of small entities will be significantly affected by this revised rulemaking. Therefore, we have concluded, and the Secretary certifies, that a regulatory flexibility analysis is not required for this final rule.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health

professions, Maternal and child health, Medicaid, Medicare, Penalties.

Accordingly, 42 CFR part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

1. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by republishing paragraph (b)(1) introductory text, and by revising paragraph (b)(1)(v) to read as follows:

§ 1003.100 Basis and purpose.

* * * * *

(b) *Purpose.* * * *

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(v) Misuse certain Departmental and Medicare and Medicaid program words, letters, symbols or emblems;

* * * * *

3. Section 1003.102 is amended by republishing paragraph (b) introductory text, and revising paragraph (b)(7) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

* * * * *

(7) Has made use of the words, letters, symbols or emblems as defined in paragraph (b)(7)(i) of this section in such a manner that such person knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that an advertisement, solicitation or other item was authorized, approved or endorsed by the Department or HCFA, or that such person or organization has some connection with or authorization from the Department or HCFA. Civil money penalties—

(i) May be imposed, regardless of the use of a disclaimer of affiliation with the United States Government, the Department or its programs, for misuse of—

(A) The words “Department of Health and Human Services,” “Health and

Human Services,” “Health Care Financing Administration,” “Medicare,” or “Medicaid,” or any other combination or variation of such words;

(B) The letters “DHHS,” “HHS,” or “HCFA,” or any other combination or variation of such letters; or

(C) A symbol or emblem of the Department or HCFA (including the design of, or a reasonable facsimile of the design of, the Medicare card, the check used for payment of benefits under title II, or envelopes or other stationery used by the Department or HCFA) or any other combination or variation of such symbols or emblems; and

(ii) Will not be imposed against any agency or instrumentality of a State, or political subdivision of the State, that makes use of any symbol or emblem, or any words or letters which specifically identifies that agency or instrumentality of the State or political subdivision.

* * * * *

4. Section 1003.103 is amended by revising paragraph (d) to read as follows:

§ 1003.103 Amount of penalty.

* * * * *

(d)(1) The OIG may impose a penalty of not more than \$5,000 for each violation resulting from the misuse of Departmental, HCFA, Medicare or Medicaid program words, letters, symbols or emblems as described in § 1003.102(b)(7) relating to printed media, and a penalty of not more than \$25,000 in the case of such misuse related to a broadcast or telecast, that is related to a determination under § 1003.102(b)(7).

(2) For purposes of this paragraph, a violation is defined as—

(i) In the case of a direct mailing solicitation or advertisement, each separate piece of mail which contains one or more words, letters, symbols or emblems related to a determination under § 1003.102(b)(7);

(ii) In the case of a printed solicitation or advertisement, each reproduction, reprinting or distribution of such item related to a determination under § 1003.102(b)(7); and

(iii) In the case of a broadcast or telecast, each airing of a single commercial or solicitation related to a determination under § 1003.102(b)(7).

* * * * *

5. Section 1003.106 is amended by revising paragraph (a)(3) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) *Amount of penalty.* * * *

(3)(i) In determining the amount of any penalty in accordance with § 1003.102(b)(7), the OIG will take into account—

(A) The nature and objective of the advertisement, solicitation or other communication, and the degree to which it has the capacity to deceive members of the public;

(B) The degree of culpability of the individual, organization or entity in the use of the prohibited words, letters, symbols or emblems;

(C) The frequency and scope of the violation, and whether a specific segment of the population was targeted;

(D) The prior history of the individual, organization or entity in its willingness or refusal to comply with informal requests to correct violations;

(E) The history of prior offenses of the individual, organization or entity in its misuse of Departmental and program words, letters, symbols and emblems;

(F) The financial condition of the individual, organization or entity involved with the violation; and

(G) Such other matters as justice may require.

(ii) The use of a disclaimer of affiliation with the United States Government, the Department or its programs will not be considered as a mitigating factor in determining the amount of penalty in accordance with § 1003.102(b)(7).

* * * * *

Approved: October 13, 1995.

June Gibbs Brown,

Inspector General.

[FR Doc. 95-28307 Filed 11-24-95; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document updates the addresses listed in 43 CFR 4.413(c) for the Office of the Solicitor and updates the identification of the States served by the Office of the Solicitor as listed in 43 CFR 4.1109(a).

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd.,

Arlington, Virginia 22203. Telephone: 703-235-3750.

SUPPLEMENTARY INFORMATION: Because this action reflects agency management and changes of address that have already taken place, the Department has determined that the provisions of the Administrative Procedure Act, 5 U.S.C. 553 (b), (d), allowing for public notice and comment as well as a thirty-day delay in a rule's effective date, are unnecessary and impracticable.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

Therefore, under the authority of the Secretary of the Interior contained in 5 U.S.C. 301, § 4.413(c) in Subpart E, and § 4.1109(a) in Subpart L, both in Part 4 of Title 43 of the Code of Federal Regulations, are amended as follows:

PART 4—[AMENDED]

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

1. The authority citation for Part 4 continues to read:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.413 is amended by revising paragraphs (c)(1) and (c)(2) introductory text; revising the addresses following paragraphs (c)(2) (i), (ii) and (iv); removing the address following paragraph (c)(2)(v) and adding in its place paragraphs (c)(2)(v) (A) and (B); and revising the addresses following paragraphs (c)(2) (vi), (vii), (ix), (xi) and (xii) to read as follows:

§ 4.413 Service of notice of appeal and other documents.

* * * * *

(c)(1)(i) If the appeal is taken from a decision of the Director, Minerals Management Service, the appellant will serve the Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.

(ii) If the appeal is taken from a decision of the Director, Bureau of Land Management, the appellant will serve:

(A) The Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended;

(B) The Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the

decision concerns the use and disposition of mineral resources.

(c)(2) If the appeal is taken from a decision of other Bureau of Land Management (BLM) offices listed below (see § 1821.2-1(d) of this title), the appellant shall serve the appropriate official of the Office of the Solicitor as identified:

(i) * * *

Regional Solicitor, Alaska Region, U.S. Department of the Interior, 4230 University Drive, Suite 300, Anchorage, AK 99508-4626;

(ii) * * *

Field Solicitor, U.S. Department of the Interior, One Renaissance Square, Two North Central, Suite 1130, Phoenix, AZ 85004-2383;

* * * * *

(iv) * * *

Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D-105), Denver Federal Center, Denver, CO 80225;

Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215;

(v) * * *

(A) The Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended;

(B) The Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of mineral resources.

(vi) * * *

Field Solicitor, U.S. Department of the Interior, Federal Building & U.S. Courthouse, 550 West Fort Street, MSC 020, Boise, ID 83724;

(vii) * * *

Regular U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107-1394;

Other Delivery Services: Field Solicitor, U.S. Department of the Interior, 316 North 26th Street, Room 3004, Billings, MT 59101;

* * * * *

(ix) * * *

Regular U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, NM 87504-1042;

Other Delivery Services: Field Solicitor, U.S. Department of the Interior, 150